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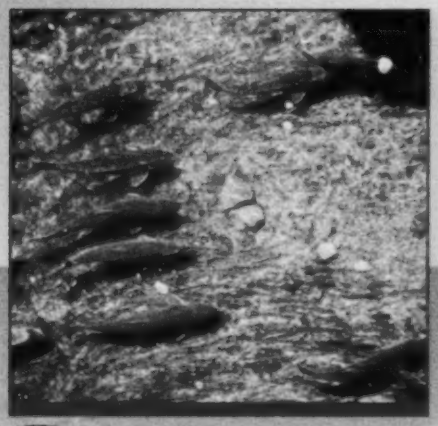

ANNUAL REPORT TO PARLIAMENT

on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*

April 1, 2011
To March 31, 2012

Canada

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DISCLAIMER

As part of the *Jobs, Growth and Long-term Prosperity Act* (Bill C-38), which received Royal Assent on June 29, 2012, amendments were made to the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. As a result, starting in Fiscal Year 2012-2013, this Annual Report to Parliament will reflect the amendments that come into force and their related policy changes.

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Abstract

Fisheries and Oceans Canada. 2012. Annual Report to Parliament on the Administration and Enforcement of the Fish Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. April 1, 2011 to March 31, 2012.

This is a report on the administration of Fisheries and Oceans Canada's National Habitat Management Program and Environment Canada's Pollution Prevention Program during the 2011-2012 fiscal year; prior to Bill C-38 receiving Royal Assent. It highlights the two departments' activities.

List of Acronyms and Abbreviations

AENV	Alberta Environment
C&P	Conservation & Protection Program
CCME	Canadian Council of Ministers of the Environment
CEPA	*Canadian Environmental Protection Act*
CEAA	*Canadian Environmental Assessment Act*
CESD	Commissioner for Environment and Sustainable Development
CFIA	Canadian Food Inspection Agency
CNR	Canadian National Railway
CSAS	The Canadian Science Advisory Secretariat
CSSP	Canadian Shellfish Sanitation Program
DFO	Fisheries and Oceans Canada
DONCE	discharge out of the normal course of events
EA	Environmental Assessment
EC	Environment Canada
EDF	Environmental Damages Fund
EEM	Environmental effects monitoring
EEP	Environmental Emergencies Program
EPAM	Environmental Protection Alternative Measures
EPMP	Environmental Process Modernization Plan
FCSAP	Federal Contaminated Sites Action Plan
GIS	Geographic Information System
HADD	Harmful alteration, disruption or destruction
HaPAE	Healthy and Productive Aquatic Ecosystems
HMP	Habitat Management Program
MMER	*Metal Mining Effluent Regulations*
MOU	Memorandum of Understanding
NPA	National Programme of Action for the Protection of the Marine Environment from Land-based Activities
OGLA	Ontario-Great Lakes Area
PATH	Program Activity Tracking system for Habitat Management
PPER	*Pulp and Paper Effluent Regulations*
PPP	*Fisheries Act* Pollution Prevention Provisions
RISS	Regulatory Information Submission System
RMF	Risk Management Framework
SARA	*Species at Risk Act*
WSER	*Wastewater System Effluent Regulations*
WWTP	wastewater treatment plant

1.0 Executive Summary

Canada's commercial, recreational and aboriginal fisheries play a critical role in Canada's economic prosperity and biological diversity. This Annual Report to Parliament summarizes the administration and enforcement of the fish habitat protection and pollution prevention provisions of the *Fisheries Act*[1], from April 1, 2011 to March 31, 2012.

This annual report highlights the activities of Fisheries and Oceans Canada's (DFO) National Habitat Management Program (HMP), Ecosystems and Oceans Science Sector, Conservation and Protection Program (C&P), as well as Environment Canada's (EC) Environmental Enforcement Branch and related Programs.

It should be noted that as part of the *Jobs, Growth and Long-term Prosperity Act* (Bill C-38), which received Royal Assent on June 29, 2012, amendments were made to the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. The amendments are intended to provide more targeted protections to Canadian fisheries resources and the habitats that support them.

The *Fisheries Act* contains two provisions that are applied for the conservation and protection of freshwater and marine fish habitat. Under this Act:

- DFO administers section 35, prohibiting any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*; and
- EC assumes the lead responsibility for the administration of subsection 36(3), the pollution prevention provision, prohibiting the deposit of deleterious substances into waters frequented by fish, unless authorized by regulations under the *Fisheries Act* or other federal legislation.

1.1 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

1.1.1 Review of Development Proposals (Referrals)

HMP staff review development proposals (referrals) to assess if a HADD of fish habitat is likely to result from a proponent's proposed works or undertakings. Staff send advice to the proponent on how to proceed with their works or undertakings in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat as

[1] The full text of the *Fisheries Act* can be found at: <http://laws-lois.justice.gc.ca/eng/acts/F-14/ >

prohibited under section 35. Advice is commonly provided in the form of a "Letter of Advice" or an "Operational Statement"[2] for low risk activities. An "Authorization" pursuant to subsection 35(2) of the *Fisheries Act* may be issued when HADD cannot be avoided.

During fiscal year 2011-2012 the HMP:

- Reviewed 7,400 development proposals (referrals) from across Canada to ensure compliance with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat;
- Provided advice to proponents or others on 4,439 occasions; and
- Issued 277 authorizations under subsection 35(2) of the *Fisheries Act*.

1.1.2 Compliance and Enforcement

DFO's Conservation and Protection Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and the habitat that supports them. The Minister of Fisheries and Oceans appoints fishery officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*.

DFO's measures to promote compliance include communication and public education; consultation with parties affected by the habitat protection provisions of the *Fisheries Act*; and technical assistance as required.

Enforcement of the habitat protection provisions is carried-out pursuant to the Compliance and Enforcement Policy for the Habitat Protection and Pollution Prevention Provisions of the *Fisheries Act*. Enforcement actions include inspections to monitor or verify compliance; investigations of alleged violations; the issuance of warnings, Inspector's Directions and Ministerial Orders. Court actions such as prosecutions, court orders upon conviction and suits for recovery of costs can also be pursued where appropriate.

During fiscal year 2011-2012, DFO:

- Issued 60 warnings under the habitat protection provisions of the *Fisheries Act*;
- Laid 1 charge under the habitat protection provisions of the *Fisheries Act*;
- Proceeded with 1 alternative measure to prosecution; and,
- Successfully completed 15 convictions under the habitat protection provisions of the *Fisheries Act*.

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[2] A list of DFO operational statements can be found at : < http://www.dfo-mpo.gc.ca/habitat/guide/page07-eng.asp#t721 >

1.2 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

Since 1978, Environment Canada (EC) has been responsible for the administration of subsection 35 (3) and related provisions of the *Fisheries Act*. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish or places where the substances may enter such waters.

During fiscal year 2011-2012, EC carried out the following specific enforcement activities and measures under the *Fisheries Act*:

- Total of 3,505 compliance verification inspections;
- Fifty-four investigations, involving gathering and analyzing evidence and information relevant to suspected violations; and
- Enforcement measures: 13 prosecutions initiated 6 convictions, 61 written directives and 188 written warnings.

EC administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, Environmental Effects Monitoring (EEM), water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2011-12 activities can be summarized as follows:

- general ongoing reviews and improvements to the administration and enforcement of the pollution prevention provisions
- compliance promotion activities to support subsection 36(3) and 38(4) which prohibit the deposit of deleterious substances to waters frequented by fish unless authorized by regulation and which requires notification in the event of an unauthorized deposit;
- development, administration and compliance promotion for regulations under subsection 36(4) for the pulp and paper sector and for the metal mining sector, including the EEM elements of those regulations;
- water quality monitoring under the Canadian Shellfish Sanitation Program;
- enforcement of the general prohibition under subsection 36(3);
- response and notification activities for emergencies as per subsection 38(4) to 38(6) regarding the deposit of deleterious substances out of the normal course of events;
- administrative and notification agreements with provinces which support effective administration of the pollution prevention provisions and associated regulations.

2.0 The Policy and Legislative Setting

2.1 Purpose of Annual Report

Section 42.1 of the *Fisheries Act* requires the Minister of Fisheries and Oceans to table an annual report to Parliament on the administration and enforcement of the fish habitat protection and pollution prevention provisions.

The Annual Report is organized under the following four parts:

- Part 1.0 presents the executive summary.
- Part 2.0 provides the legislative and policy context for the conservation and protection of fish habitat, as well as an overview of DFO's HMP.
- Part 3.0 reports on DFO activities in 2011-2012 for the administration and enforcement of the fish habitat protection provisions of the *Fisheries Act*. This part covers both the review of development proposals (referrals) by the HMP, and the support provided by the Ecosystem and Oceans Science Sector and C&P programs.
- Part 4.0 reports on the work of EC in developing regulations, policies and guidelines related to the pollution prevention provisions of the *Fisheries Act*.

2.2 Legislative Basis for the Conservation and Protection of Fish Habitat

The Government of Canada fulfills its constitutional responsibilities for seacoast and inland fisheries through the administration and enforcement of the *Fisheries Act*. This Act provides DFO with powers and authorities to protect commercial, recreational and aboriginal fisheries resources and the habitat[3] that supports them.

Section 35 of the *Fisheries Act* prohibits any work or undertaking that would cause the harmful alteration, disruption or destruction (HADD) of fish habitat, unless authorized by the Minister of Fisheries and Oceans or through regulations under the *Fisheries Act*.

Subsection 36(3) is the key pollution prevention provision. It prohibits the deposit of deleterious substances into waters frequented by fish, unless authorized by regulation under the *Fisheries Act* or other federal legislation. Regulations to authorize deposits of certain deleterious substances have been established for key industry sectors pursuant to subsection 36(5) (e.g., pulp and paper, and metal mining). EC is responsible for the administration and enforcement of the pollution prevention provisions of the *Fisheries Act*.

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[3] Fish habitat is defined under subsection 34(1) of the *Fisheries Act* as "spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes".

The *Fisheries Act* also contains provisions that support the administration and enforcement of the habitat protection and pollution prevention provisions. These include:

- Powers for the Minister to request plans and specification for works and undertakings that might affect fish or fish habitat (section 37);
- Authority for the Minister to appoint inspectors and analysts (subsection 38(1));
- Description of inspectors' powers (including entry, search, and direction of preventive, corrective or cleanup measures) (subsections 38(3) and 38(6));
- Description of offences and punishment (section 40); and
- Determination of liability when a deleterious substance has been deposited (section 42).

2.3 Policy for the Management of Fish Habitat

The *Policy for the Management of Fish Habitat* (the Policy), and its supporting operational policies provide the framework for the administration and implementation of the habitat protection and pollution prevention provisions of the *Fisheries Act*.

The Policy has an overall objective to "increase the natural productive capacity of habitat for the nation's fisheries resources". This is to be achieved through the Policy's three goals of conservation, restoration, and development of fish habitat.

The Policy recognizes that habitat objectives must be linked and integrated with fish production objectives and with other sectors of the economy that make legitimate demands on water resources. As a result, the Policy identifies the need for integrated planning for habitat management as an approach to ensuring the conservation and protection of fish habitat that sustain fish production while providing for other uses.

A key element of the Policy is the guiding principle of "no net loss of the productive capacity of fish habitat". This principle supports the Policy's conservation goal. Prior to issuing an authorization under subsection 35(2) of the *Fisheries Act*, DFO applies the "no net loss" guiding principle, so that unavoidable habitat losses as a result of development projects are balanced by newly created and/or restored fish habitat.

If unacceptable losses of fish habitat cannot be prevented, the Policy calls for an authorization not to be issued. Furthermore, where deleterious substances result in harm to fish or damage to fish habitat, compensation is not an option.

2.4 National Habitat Management Program

The HMP has responsibilities pursuant to the *Fisheries Act*, the *Species at Risk Act*, the *Canadian Environmental Assessment Act* and northern environmental assessment regimes. Consequently, the HMP is a major federal regulator affecting many development projects occurring in or around fresh and marine fish-bearing waters across Canada.

HMP activities contribute to its mandate to conserve and protect fish habitat that sustain fisheries resources that Canadians value. The program helps Canadians manage the impacts of non-fishery activities on fish habitat in the context of government-wide initiatives for sustainable development. The program uses scientific knowledge and understanding to develop regulations and policies; provides formal advice and direction; engages with individuals, organizations, and other levels of government; and manages compliance with the fish habitat protection provisions of the *Fisheries Act*.

HMP staff located in National Headquarters are responsible for the overall coordination of the delivery of the HMP, providing national policy direction, strategic advice and liaison with other DFO sectors, federal departments and national industry and non-governmental organizations (NGOs). Day-to-day delivery of the program is carried out by habitat staff located in six DFO regions.

3.0 Administration and Enforcement of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.1 Benefit for Canadians: Healthy and Productive Aquatic Ecosystems

HMP activities are aligned with DFO's strategic outcome identified as *sustainable aquatic ecosystems*. This outcome involves the sustainable development and integrated management of resources in or around Canada's aquatic environment through oceans and fish habitat management. Specifically, HMP activities support the development and use of aquatic resources for the benefit of all Canadians through ensuring the availability of healthy and productive fish habitat. Conserving and protecting fish and fish habitat requires the cooperation of Provinces, territories, industry, Aboriginal groups, individual Canadians and other stakeholders.

For more information on the impact of the Habitat Management Program Activity, as it contributes to progress towards the achievement of *sustainable aquatic ecosystems,* please refer to the annual Departmental Performance Report for Fisheries and Oceans Canada.[4]

3.2 Administration of the Fish Habitat Protection Provisions of the *Fisheries Act*

3.2.1 Overview

The administration of the Habitat Protection Provisions of the *Fisheries Act* is the responsibility of DFO's HMP. The program accomplishes this in part by reviewing development proposals (known as "referrals"). Proponents may voluntarily submit information about their proposed works or undertakings to determine if they comply with the Habitat Protection Provisions of the *Fisheries Act*. The referral process enables HMP staff to review submitted proposals to assess if a HADD of fish habitat is likely to result from the proposed works or undertakings. As part of its practice, the HMP applies a Risk Management Framework consisting of three components: Aquatic Effects Assessment; Risk Assessment, and; Risk Management.[5]

As part of the referral process, Program staff send advice to a development proponent indicating the requirements for the conservation and protection of fish habitat. This advice

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[4] The report is available at: < http://www.dfo-mpo.gc.ca/reports-rapports-eng.htm >

[5] Information on DFO's application of the RMF is available at: <http://www.dfo-mpo.gc.ca/habitat/role/141/1415/14155/risk-risque/index-eng.asp>

informs proponents on how to proceed with their works or undertaking in a manner that will comply with the *Fisheries Act*, mainly with respect to avoiding the HADD of fish habitat (section 35). Advice is commonly provided in the form of a "Letter of Advice" or an "Operational Statement" for low risk activities. An "Authorization" pursuant to subsection 35(2) of the Act may be issued where HADD cannot be avoided.

Prior to issuing certain Authorizations pursuant to the *Fisheries Act*, HMP staff must verify whether the project under review has potential to adversely affect aquatic species listed under SARA, or their critical habitat, and ensure that an environmental assessment (EA) under CEAA (or other EA regimes) is completed.

DFO may exercise decision-making authority that triggers the CEAA under the following circumstances: where DFO is the project proponent; provides financial assistance; sells, leases, or otherwise transfers control or administration of federal land; or, makes certain regulatory decisions to enable a project to be carried out. In such cases, DFO becomes a "responsible authority" under the CEAA and must ensure that an EA is prepared prior to making a decision. Typically, an EA considers broad environmental issues linked to the project, as well as including those directly associated with fish and fish habitat.

3.2.2 Review of Development Proposals (Referrals)

This section presents data recorded in the Program Activity Tracking System for Habitat (PATH) on review of referrals.

Table 1 presents summary data on the number of habitat referrals in 2011-2012 by work category for each DFO region.

Figure 1 illustrates the pattern in total habitat referrals, by region, from fiscal years 2007-2008 to 2011-2012.

Figure 2 illustrates the regional distribution of total habitat referrals for 2011-2012.

Table 1:
Summary of Habitat Referrals by Work Category
Fiscal Year 2011-2012

Region	Aquaculture	Contaminated Site Remediation	Control of Nuisance Species	Dredging	Fish Offal Disposal	Habitat Improvement	In-Stream Works	Log Handling	Mineral, Aggregate & Oil & Gas Extraction	Shore-line works	Structures in Water	Water Mgmt	Water-course Crossing	Other	Total
Central & Arctic	3	17	4	108	0	14	719	0	101	541	268	162	1029	119	3085
Gulf	20	0	0	92	0	27	23	0	3	61	41	31	198	41	537
Maritimes	19	5	0	25	0	10	25	0	9	132	98	75	258	60	716
Newfoundland	9	3	0	29	2	4	16	0	80	103	126	32	291	142	837
Pacific	2	10	2	59	0	36	235	43	168	395	223	179	295	151	1798
Quebec	4	1	0	26	1	6	80	0	13	91	48	15	145	6	436
TOTAL	**57**	**36**	**6**	**339**	**3**	**97**	**1098**	**43**	**374**	**1323**	**804**	**494**	**2216**	**519**	**7409**

** Other includes those referrals where work category is to be determined*

Figure 1: Referrals Received by Region, 2007-2008 to 2011-2012

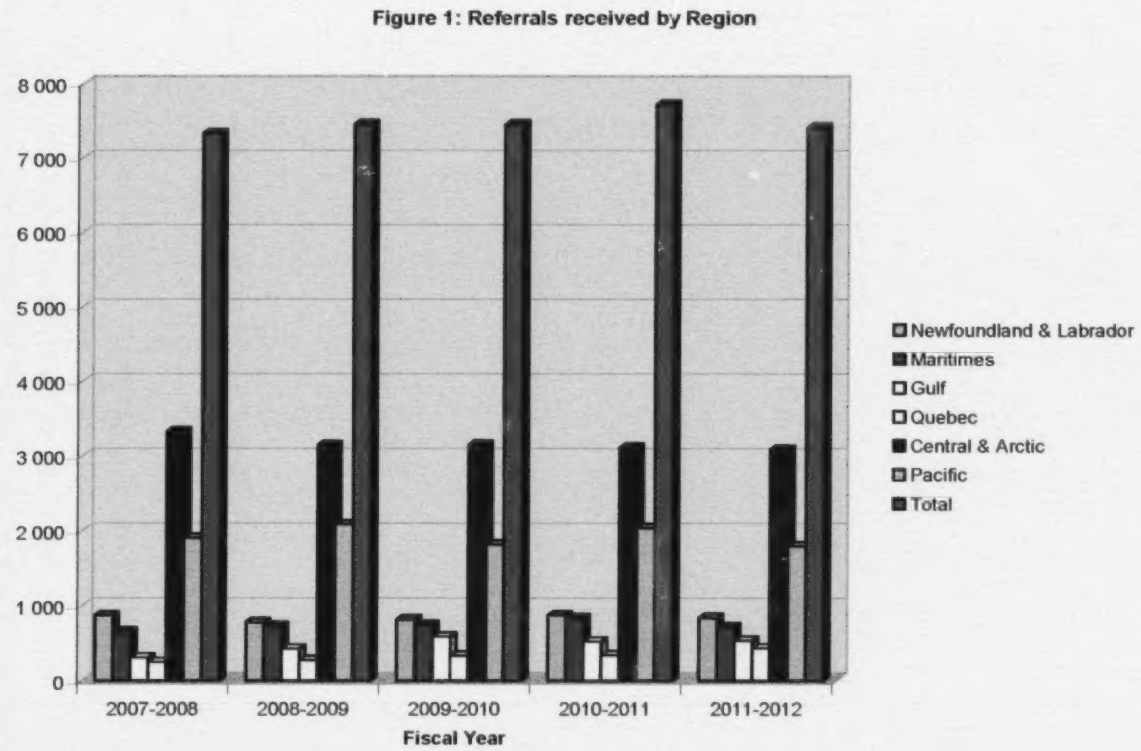
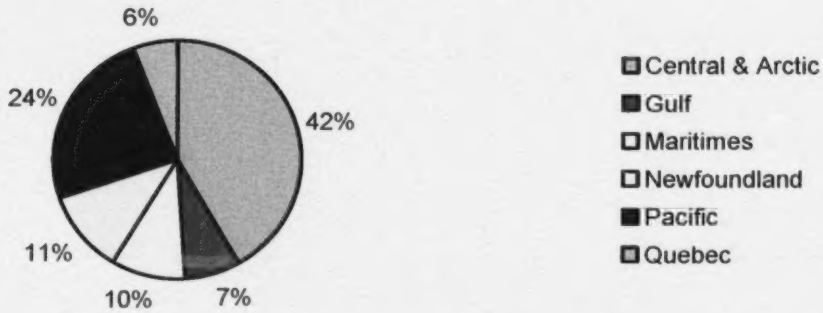


Figure 2: Percent of Referrals by Region, 2011-2012



3.2.3 Advice Provided and Authorizations Issued

Data recorded in PATH on advice provided and authorizations issued by DFO region are presented below in Table 2.

Table 2: Advice Provided and Authorizations Issued Fiscal Year 2010-2011

REGION	Advice Provided to Proponent or Others	Advice provided in form of Operational Statement	Authorizations Issued	TOTAL
Central & Arctic	1478	180	86	1744
Newfoundland	587	17	2	606
Maritimes	581	0	59	640
Gulf	413	0	18	431
Quebec	581	44	34	659
Pacific	564	29	78	671
TOTAL	4204	270	277	4751

Figure 3: Advice Provided by Region, 2007-2008 to 2011-2012[6]

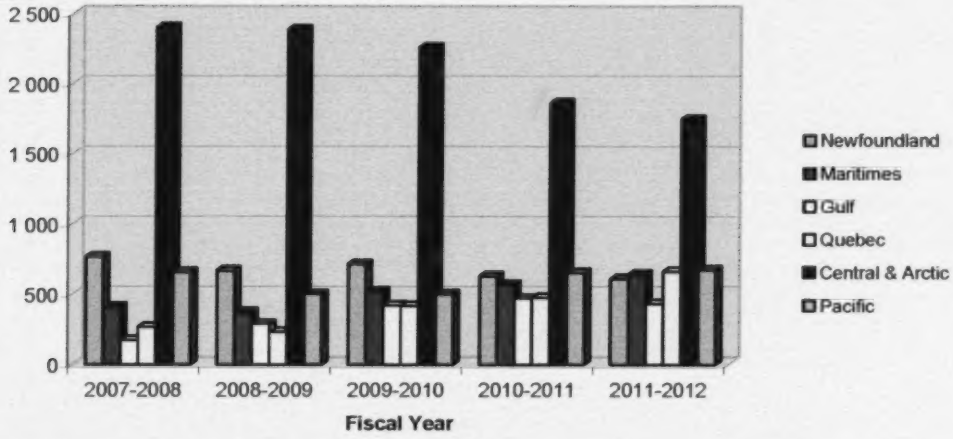
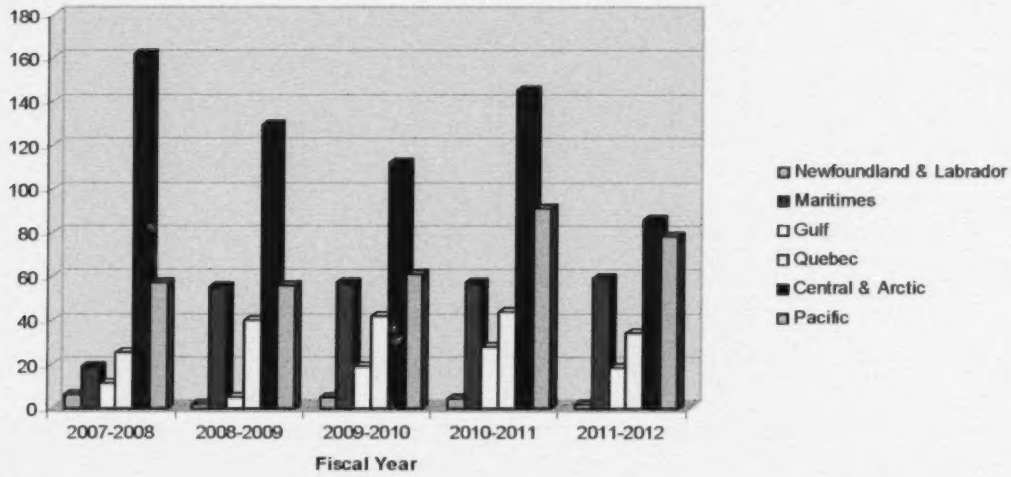


Figure 4: Authorizations Issued by Region, 2007-2008 to 2011-2012[7]



[6] As of 2005-2006, the advice provided includes Operational Statements provided as Advice (following receipt of referral).
[7] Notifications of use of Class Authorizations are not inlcuded in this chart.

3.2.4 Notifications and Use of Regulatory Streamlining Tools

As per Section 1.1.1 of this Report, referrals are requests submitted to DFO either directly by a proponent or indirectly by a province or territory, or other agency with respect to a proposed work or undertaking which may affect fish or habitat. Due to the scope and number of projects possibly affecting fish or habitat, various forms of referral "streamlining tools" are in place to improve efficiency and effectiveness of regulatory reviews for low-risk activities.

For example, *"Class" Authorizations* provide a process for agricultural municipal drains in Southern Ontario. The issuance of class authorizations for pre-defined drain maintenance activities eliminates the requirement for a site-specific review process. Similarly, an integrated regulatory regime for placer mining in the Yukon Territory provides a streamlined process for environmental review of placer mining proposals pursuant to the Yukon Environmental and *Socio-economic Assessment Act*.

In addition, *Operational Statements* provide generic guidance and specify mitigation measures needed to avoid harm to fish habitat. Proponents incorporating measures outlined in an Operational Statement comply with the Act and therefore do not need to submit a request for a site-specific project review.

Examples of other regional streamlining tools include the Ontario *Conservation Authority Reviews*, Pacific Region's *Best Management Practices Notifications*, and Maritime and Gulf regions *Guidelined Works* process with the provinces for specified low risk activities.

Table 3 exhibits quantitative information only for the Class Authorizations and the Operational Statements. The Class Authorizations are tracked and reported nationally because they authorize a HADD. They are in addition to the project specific authorizations reported in Table 2. The Operational Statements are a national initiative launched under the 2004 Environmental Process Modernization Program. The other "streamlining" tools mentioned above are regional initiatives and do not have a mandatory tracking requirement. It should be noted that in the case of the Maritimes and Gulf regions, the Guidelined Works process with the provinces preceded the implementation of, and are analogous to, the national Operational Statement process and therefore those regions do not use the Operational Statements as shown in Table 3.

Table 3 provides a summary of notifications of the use of Class Authorizations and Operational Statements in Fiscal Year 2011-2012.

Table 3:
Notifications of use of Class Authorizations and Operational Statements

Fiscal Year 2011-2012

REGION	Class Authorizations Notifications	Operational Statements Notifications	TOTAL
Newfoundland and Labrador	0	59	59
Maritimes	0	0	0
Gulf	0	0	0
Quebec	0	37	37
Central and Arctic	468	2233	2701
Pacific	36	420	456
TOTAL	**504**	**2749**	**3253**

3.3. Compliance and Enforcement of the Fish Habitat Protection Provisions of the Fisheries Act

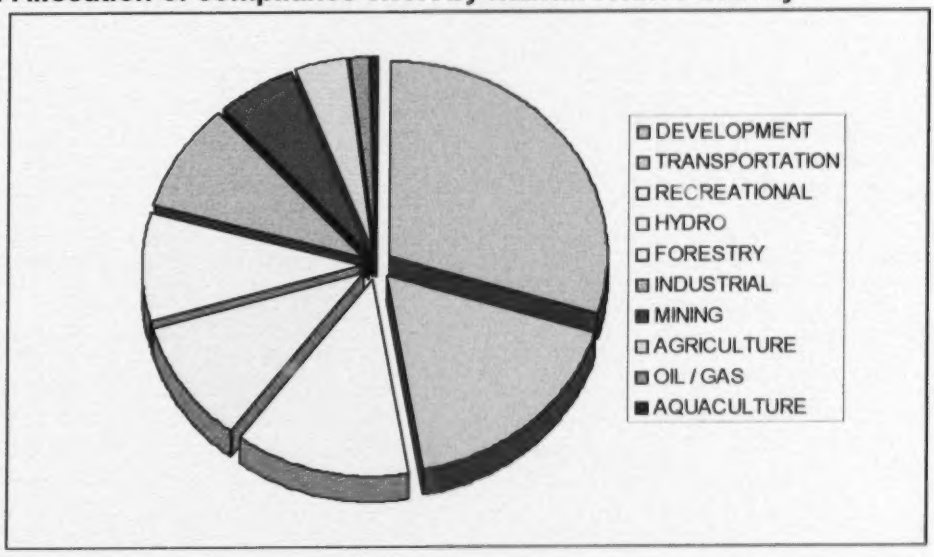
DFO's C&P Program is responsible for monitoring compliance with legislation and regulations regarding the conservation of fisheries resources and fish habitat. The Minister of Fisheries and Oceans appoints fishery officers to enforce fisheries regulations and management plans as well as the habitat provisions of the *Fisheries Act*.

In addition to protecting fish habitat, fishery officers conduct at-sea patrols in coastal and inshore areas, monitor catches, conduct forensic investigations and audits, conduct inland patrols and provide information to fishers regarding government policies and regulations. The enforcement and compliance monitoring activities of Fishery officers are key to protecting Canada's fish and fish habitat.

The C&P Directorate has adopted a three-pillar approach to the delivery of its enforcement program to address existing challenges and to integrate intradepartmental compliance issues in a comprehensive compliance program. This approach, as described under the DFO National Compliance Framework, guides the application of compliance tools organized into three pillars of compliance management. Pillar One activities include under the heading "Education and shared stewardship": informal and formal education programs and co-management / partnership agreements. Pillar Two, titled "Monitoring, control and surveillance", include activities such as land, sea and air patrols; inspections and compliance monitoring of third party service providers; and enforcement response to non-compliance. Pillar Three, titled "Major case / special investigations" include formal intelligence gathering and analysis, forensic audits and prosecutions.

For fiscal year 2011-2012, Fishery officers dedicated a total of 37,704 hours to habitat compliance and enforcement activities. Further analysis indicates there are five major habitat activities that accounted for this time. These habitat activities are in descending order: rural and urban development, transportation, recreational, hydro and forestry. The effort and time spent on habitat compliance management, identified as a single work element, represents 6.9% of the total amount of time Fishery officers dedicated to other work elements.

Figure 5: Allocation of compliance effort by habitat-related activity



Data for Figure 5

SECTOR	HOURS	%
Development	11243	29.8%
Transportation	6553	17.4%
Recreational	4883	13.0%
Hydro	3927.25	10.4%
Forestry	3395	9.0%
Industrial	3274	8.7%
Mining	2204.25	5.8%
Agriculture	1479.5	3.9%
Oil / Gas	543	1.4%
Aquaculture	202.25	0.5%
	37704.25	**100.0%**

Table 4 and Table 5 summarize C&P's compliance and enforcement activities by region in 2011-2012.

Table 4: Summary of DFO Habitat Enforcement Activities
Fiscal Year 2011-2012

Region	Warnings Issued	Charges Laid	Alternatives to Prosecution*	Inspector's Directions
Central and Arctic	2	0	0	2
Gulf	6	0	0	4
Maritimes	12	0	0	19
Newfoundland and Labrador	1	0	0	0
Pacific	37	1	1	36
Quebec	2	0	0	0
Total	60	1	1	61

** Alternatives to prosecution include out-of-court settlements aimed at restoring unauthorized HADD in a timely manner.*

Table 5:
Convictions Reported under the Habitat Protection Provisions of the *Fisheries Act*
Fiscal Year 2011-2012

REGION	Section 35(1)	Section 36(3)	Section 40(3)	TOTAL
Central and Arctic	7	0	0	7
Gulf	1	0	0	1
Maritimes	3	0	1	4
Newfoundland and Labrador	0	0	0	0
Pacific	2	1	0	3
Quebec	0	0	0	0
TOTAL	13	1	1	15

3.4 Support of Ecosystems and Oceans Science Sector

DFO's Ecosystems and Oceans Science Sector conducts research and provides scientific advice to assist habitat management practitioners. In collaboration with managers in the Ecosystems Management Directorate, environmental scientists identify knowledge gaps related to habitat management, conservation, restoration and improvement, and devise research projects to address those gaps. Some of the research products and scientific advice provided in fiscal 2011-2012 included:

- Examination of potential harmful effects on eelgrass habitat
- Examination of potential interactions and impacts between fisheries, including habitat considerations (e.g. lobster-surfclam in Shelburne County, Nova Scotia and wildfish-aquaculture in the Magdalen Islands, Quebec).
- Assessment and identification of important and critical habitat for several Pacific whale species (Blue, Fin, Sei and North Pacific Right Whales), Leatherback Sea Turtle, as well as freshwater species (Cultus Pigmy Sculpin, several Freshwater Mussels)
- Monitoring Design and Metrics to Assess the Effectiveness of Habitat Compensation Activities
- Review of Potential Environmental Affects for projects (including tidal energy and fish passage at dams, small scale hydroelectric facilities in British Columbia, and intertidal aquaculture of the geoduck clam).
- Producing Monitoring Indicators, Protocols and Strategies for ecologically and biologically significant areas in Canada (including the potential effects of multiple activities in Musquash Estuary).

Research results are transferred to HMP staff in the form of peer-reviewed scientific advice, scientific workshops, published reports, fact sheets, briefings, and personal consultations. Information provided can range from informal, one-on-one discussions, to regional peer-reviewed advice sessions and large-scale National Advisory Process workshops that follow a formal process to produce peer-reviewed, published advisory documents. DFO's Canadian Science Advisory Secretariat (CSAS) within the Ecosystems and Oceans Science Sector oversees the provision of formal scientific advice, and maintains a website where published reports are made available to the Canadian public.

4.0 Administration and Enforcement of the Pollution Prevention Provisions of the *Fisheries Act*

Since 1978, Environment Canada (EC) has assumed the lead responsibility for the administration of the pollution prevention provisions of the *Fisheries Act* - namely section 34 and sections 36 to 42. These sections of the Act deal with the deposit of deleterious substances into waters frequented by fish or places where the substances may enter such waters.

EC administers the pollution prevention provisions through a suite of activities including compliance promotion, regulations, Environmental Effects Monitoring (EEM), water quality monitoring, enforcement, emergencies management and administrative agreements. The department's 2011-12 activities may be summarized as follows:

- General ongoing reviews and improvements to the administration and enforcement of the pollution prevention provisions;
- Compliance promotion activities to support subsection 36(3) and 38(4) which prohibits the deposit of deleterious substances to waters frequented by fish unless authorized by regulation and which requires notification in the event of an unauthorized deposit;
- Development, administration and compliance promotion for regulations under subsection 36(4) for the pulp and paper sector and for metal mines, including the environmental effects monitoring (EEM) elements of those regulations;
- Water quality monitoring under the Canadian Shellfish Sanitation Program;
- Enforcement of the general prohibition under subsection 36(3);
- Response and notification activities for emergencies as per subsection 38(4) to 38(6) regarding the deposit of deleterious substances out of the normal course of events;
- Administrative and notification agreements with provinces which support effective administration of the pollution prevention provisions and associated regulations.

4.1 General Reviews and Improvements

In May 2009, the Commissioner for Environment and Sustainable Development (CESD) tabled in Parliament a review of the federal government's activities under the *Fisheries Act* to protect fish habitat, including Environment Canada's administration and enforcement of the pollution prevention provisions. The CESD report included a number of important recommendations for ways in which Environment Canada could make improvements. These included the need to set out clearer objectives, results expectations and accountabilities, to improve the department's risk-based approach to assess and address the risks of non-compliance with the *Fisheries Act* Pollution Prevention Provisions (PPP), to review older regulations and guidelines, to improve enforcement quality assurance and to

work with the Department of Fisheries and Oceans to more clearly establish expectations with respect to administration of the pollution prevention provisions.

Environment Canada has made progress over the past year with respect to the commitments it made in response to these 2009 CESD recommendations. The department has developed a Performance Management Strategy for the pollution prevention provisions, is exploring ways to improve its risk-based approach and is nearing completion in its review of a number of older regulations and guidelines. Dedicated resources remain in place for enforcement quality assurance. Environment Canada and the Department of Fisheries and Oceans have an active dialogue underway on their respective roles and responsibilities and remain committed to renewing the Memorandum of Understanding concerning the administration and enforcement of the pollution prevention provisions between the two departments.

4.2 Compliance Promotion for General Prohibition of Releases of Deleterious Substances to Waters Frequented by Fish

Compliance promotion relates to the planned activities that increase the awareness and understanding of regulates with the *Fisheries Act* and related regulations. Through these activities, information is provided on what is required to comply, the benefits of complying with the law as well as the consequences of non-compliance.

The approach to compliance promotion is collaborative and coordinated across the department's programs, regions and with Enforcement. It is achieved using various tools and approaches such as website postings, letters and emails, brochures, site visits, responses to inquiries and information sessions.

In 2011-2012, EC undertook compliance promotion activities relating to the general pollution prevention provisions, identified in sub-sections 36(3) and 38 of the *Fisheries Act,* across the country for a number of sectors. EC undertakes compliance promotion primarily through the environmental assessment process (by making organizations aware of their regulatory requirements when they submit their projects for environmental assessment), as a result of Enforcement activities, and in response to specific inquiries.

- EC undertook reviews of environmental assessment proposals for over 130 large-scale projects, which included comprehensive studies and panel reviews, and approximately 1,500 smaller-scale projects. Reviews were used to identify issues related to *Fisheries Act* PPP and related Regulations, and encouraged regulates, through proactive planning of their projects, to ensure that they would meet all regulatory requirements. These reviews included diamond, coal, potash and metal mining, oil and gas, and hydroelectric power generation projects.

- EC provided scientific and technical advice related to federal contaminated sites and potential *Fisheries Act* pollution prevention provisions implications through various avenues including the Federal Contaminated Sites Action Plan (FCSAP) and environmental assessments.

- In 2011-2012, EC responded to over 120 inquiries regarding the *Fisheries Act*, related to a broad range of activities (e.g. dredging of small craft harbours and the associated discharges from containment cells; marine maintenance operations such as cleaning ship hulls; use of carbon black and coal dust in ice island ablation enhancement field trials; and industrial discharges to harbours).

4.3 Regulations

4.3.1 Pulp and Paper

EC's analysis of the effluent data generated during 2010[8] by Canadian pulp and paper mills and off-site treatment facilities concluded that these facilities continued to have high rates of compliance with the effluent quality limits prescribed in the *Pulp and Paper Effluent Regulations* (PPER). Across the country in 2010, the Regulations applied to 92 pulp and paper mills and one off-site treatment facility that deposit effluent directly into the environment. Compliance rates are unchanged from the previous year (i.e. over 99% for total suspended solids and biochemical oxygen demand, 97.6% for the requirement that effluent be non-acutely lethal to rainbow trout and approximately 99% for the EEM requirements.

The Government published *Regulations Amending Certain Regulations Made Under the Fisheries Act* in the *Canada Gazette*, Part II on 13 April 2011. The amendments removed the requirements for verbal notification in the event of a discharge out of the normal course of events (DONCE) from the PPER. These requirements can now be found in the new *Deposit Out of the Normal Course of Events Notification Regulations,* which were also published in Part II of the *Canada Gazette* on April 13, 2011.

EC continued to provide guidance and advice to the pulp and paper sector on the EEM requirements under the PPER. A national assessment of the pulp and paper mills EEM data from cycle five was initiated in 2011-2012. Preliminary results from the Cycle five national assessment were presented at the 38th Aquatic Toxicity Workshop (ATW 2011, Winnipeg). Stakeholders were also provided with a status update presentation in May 2011.

To promote compliance with regulations under the *Fisheries Act*, EC continued to provide advice to the pulp and paper sector on the requirements of the PPER. Compliance promotion activities included sending upwards of 90 emails and letters to regulatees and continued support for the electronic reporting of data through the Regulatory Information Submission System for pulp and paper mills. The information system is a web-based reporting tool used by industry to report mandatory data as required under the PPER.

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[8] Reporting data for the PPER are submitted through one of four electronic and/or paper based systems across Canada, depending upon which province a given mill is located. 2010 is the most recent year for which data have been pooled, tabulated and analysed at an aggregate level.

4.3.2 Metal Mines

EC's analysis of the effluent data generated during 2010 by Canadian metal mines concluded that these companies continued to have high rates of compliance with the effluent quality limits prescribed in the *Metal Mining Effluent Regulations* (MMER). The Regulations applied to 105 mining facilities across the country in 2010, and the compliance rate with limits for cyanide and lead was 100%, over 99% for arsenic, copper, nickel, zinc, radium 226 and pH, and almost 96% for total suspended solids. The Regulations also require that effluent be non-acutely lethal to rainbow trout, and in 2010, the compliance rate for this requirement was 97.3%. The compliance rate was approximately 90%.

EC continues to provide guidance and advice to the metal mining sector on the EEM program required under the MMER. The national assessment of the EEM data from the second phase of monitoring was completed and will be released in 2012-2013. EC completed the review of its technical guidance document on EEM to ensure that it is adequate, up to date, clear, reflective of the 2012 MMER amendments and relevant and reflects departmental actions taken in response to recommendations from the Metal Mining EEM Review Team[9]. Meetings with the Metal Mining regulated community were held to explain the updated guidance and to discuss scientific related topics.
The MMER were amended once in 2010. These amendments added portions of three water bodies to Schedule 2 of the Regulations. These water bodies are associated with a mine development in British Columbia.

Compliance promotion activities in this sector included the provision of information and advice to the regulated community on the requirements of the MMER and the *Fisheries Act*, as well as in response to the Environmental Assessment (EA) project review process. Over 80 letters/emails were sent, and site visits were made to mines subject to the MMER and prospective mines, including proposed mines undergoing environmental assessments. Several meetings were held throughout Canada with industry, provincial and municipal government representatives on the application of the *Fisheries Act* pollution prevention provisions and the MMER to Canadian mines and requirements to comply.

4.3.3 Notification

In the event of an oil or chemical spill, federal and provincial/territorial authorities need to be notified in order to coordinate an adequate oversight of the response. The *Deposit Out of the Normal Course of Events Notification Regulations* prescribe verbal notification requirements for unauthorized deleterious substance releases under the *Fisheries Act*. In order to reduce notification burden, and duplication of effort, these Regulations provide the

[9] Metal Mining EEM Review Team Report, (Environment Canada, 2007).

regulated community and the public with the name and telephone number of the 24-hour authorities operating for the respective province or territory to which notifications are to be made. This means that the polluter need only call one, well-known provincial or territorial number. The 24-hour operating centre that received the call then transfers the information to Environment Canada to enable timely and effective oversight and the possible provision of scientific support if necessary.

Compliance promotion activities include the provision of information to the regulated community through EC's Environmental Emergencies Program website, the coordination of messages through existing compliance promotion activities for Regulations that require verbal notification (e.g. MMER and PPER). EC provides supplemental information as required, to ensure effective and nationally consistent delivery.

4.3.4 Wastewater

The Government published the proposed *Wastewater System Effluent Regulations* (WSER) in the Canada Gazette, Part I on March 20, 2010.

During fiscal year 2011-12, EC continued work to finalize the proposed WSER, as well as work to develop a regulatory framework for wastewater in the north.

The final WSER were published on July 18, 2012. The WSER include national baseline effluent quality standards achievable through secondary treatment or equivalent, compliance timelines, and rules on monitoring and reporting. They also take a first step toward managing sewage overflows from combined sewers. The WSER apply to wastewater systems collecting an average daily volume of influent of 100 cubic meters or more during any calendar year. Wastewater systems located in Nunavut, Northwest Territories, and in northern regions of Quebec and Newfoundland and Labrador are exempted from the WSER as more research is being done to determine treatment standards for extremely cold climates. The WSER's effluent quality standards requirements are phased-in over time. Wastewater systems posing a high risk will be required to meet the effluent quality standards by the end of 2020, those posing a medium risk by the end of 2030, and those posing a low risk by the end of 2040.

The intended outcome of the WSER is to ensure that the release of wastewater effluent does not pose unacceptable risks to human and ecosystem health or fisheries resources through the application of one set of standards in a fair, consistent, and predictable manner. The WSER are Environment Canada's main tool to implement the Canadian Council of Ministers of the Environment (CCME) Canada-wide Strategy for the Management of Municipal Wastewater Effluent that was endorsed by the CCME on February 2009.

Environment Canada worked with provinces, through the CCME-Municipal Wastewater Effluent Coordinating Committee (MWWE CC), to refine the EEM requirements that were included in the proposed WSER, and to continue to develop a regulatory regime for

wastewater in the north. The intention is to publish these requirements at a later date through an amendment to the final WSER.

While formal compliance promotion activities will not take place until the final Regulations is published, some outreach occurred in 2011-2012 that helped regulatees prepare to comply with the final Regulations. Presentations on the CCME Canada-wide Strategy and the development of Regulations that would support its implementation were made to stakeholders at wastewater meetings/events across the country.

4.3.5 Other Regulations and Guidelines

Environment Canada continued its review of a number of older *Fisheries Act* pollution prevention provisions Regulations and Guidelines to ensure that they are up to date and relevant and that regulations are enforceable. These include the *Petroleum Refinery Liquid Effluent Regulations* and Guidelines, *Chlor-Alkali Mercury Liquid Effluent Regulations*, *Meat and Poultry Products Plant Liquid Effluent Regulations*, *Potato Processing Plant Liquid Effluent Regulations*, *Fish Processing Operations Liquid Effluent Guidelines* and *Metal Finishing Liquid Effluent Guidelines*.

4.4 Water Quality Monitoring – Canadian Shellfish Sanitation Program

Under the Canadian Shellfish Sanitation Program (CSSP), EC surveys bivalve molluscan shellfish growing areas for the purposes of harvesting area classification. EC makes classification recommendations to Fisheries and Oceans Canada (DFO) and the Canadian Food Inspection Agency (CFIA) pursuant to its responsibilities under the CSSP MOU. DFO considers this information and will implement closures for those areas as appropriate under the *Management of Contaminated Fisheries Regulations*, which DFO administers. In 2011-2012, over 39,000 marine water quality samples were collected to support shellfish harvest areas along the coastlines of the Atlantic, Pacific and Quebec (St. Lawrence Estuary) regions of Canada. Shellfish area classification boundaries are continuously being modified due to classification changes and refinements in the creation or modification of the area polygons. EC continues to improve area measurement of shellfish growing areas by using the latest base-map available.

In 2011, there were 4323 recorded spills to shellfish areas from wastewater treatment plants (WWTPs). This was an increase from 4,042 spills recorded in 2010. CSSP partners (CFIA, DFO, EC) continue working together to raise awareness of WWTP operators about the importance of timely reporting pursuant to s. 38(4) of the *Fisheries Act*. EC assessed the adverse effects of such spills on harvest areas and made appropriate closure recommendations to DFO. The CSSP continues the process of redefining the classification of harvest areas near WWTPs, including EC's assessment of over 300 WWTPs that could potentially impact these areas.

EC undertook a pro-active compliance promotion campaign in the Atlantic, Quebec and Pacific Yukon regions to remind operators of wastewater treatment facilities adjacent to shellfish growing areas to report any deposits out of the normal course of events, as per the requirements of s. 38(4). This was done either directly for operators (e.g. First Nations), through presentations at wastewater events, and/or via provincial regulators. This also included information, where appropriate, on the *Deposit Out of the Normal Course of Events Notification Regulations*.

4.5 Enforcement Activities and Measures

4.5.1 Summary of Enforcement Activities

Table 6 summarizes the number of occurrences, inspections and investigations carried out under the *Fisheries Act* pollution prevention provisions by EC in 2011-2012.The following explanations should be noted with respect to the table:

An **occurrence** is any event where there is a possible violation of the environmental and wildlife legislation administered, in whole or in part, by EC. An occurrence can generate an inspection or an investigation. Occurrences are tabulated based on Reported Date, for all categories except Spill/Release. An occurrence file may include one or more regulations, therefore is it possible that the data at the regulation level, may not add to the total at the legislation level.

An **inspection** is an activity that involves verification of compliance with the environmental or wildlife legislation administered, in whole or in part, by EC. Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

An **investigation** is the gathering and analyzing, from a variety of sources, of evidence and information relevant to a suspected violation where there are reasonable grounds to believe that an offence has been, is being or is about to be committed with regards to the pollution prevention provisions of the *Fisheries Act*. Investigations are tabulated by number of investigations files, based on Start Date of the investigation. An investigation file may include activities relating also to another piece of legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

Table 6:
EC Enforcement Activities and Measures Carried Out under the Fisheries Act
Fiscal Year 2011-2012

NATIONAL	Inspections[10]			Investigations[11]	Enforcement Measures				
	Total	Off-site	On-site		Prosecutions	Charges	Convictions	Written Directives	Written Warnings
FA – *Fisheries Act*	3,505	2,485	1,020	54	13	21	6	61	188
Chlor-Alkali Mercury Liquid Effluent Regulations	1	1	-	-	-	-	-	-	-
Fish Processing Operations Liquid Effluent Guidelines	8	-[12]	8	-	-	-	-	-	-
General Prohibition	1,694	849	845	50	13	21	6	49	102
Guidelines for Effluent Quality and Wastewater Treatment at Federal Establishments	2	-	2	-	-	-	-	-	-
Meat and Poultry Products Plant Liquid Effluent Regulations and Guidelines	2	-	2	-	-	-	-	-	-
Metal Mining Effluent Regulations	563	491	72	5	-	-	-	2	43
Petroleum Refinery Liquid Effluent Regulations and Guidelines	12	11	1	-	-	-	-	-	-
Potato Processing Plant Liquid Effluent Regulations	53	48	5	-	-	-	-	-	-
Pulp and Paper Effluent Regulations	1,157	1,079	78	1	-	-	-	9	40
Deposit Out of Normal Course of Events Notification Regulations	13	6	7	4	-	-	-	1	3

[10] **Number of Inspections – new way of counting**: Only closed files using the end date are tabulated. The number of inspections relates to the number of regulatees inspected for compliance under each of the applicable regulations.

[11] **Number of Investigations**: Investigations are tabulated by number of investigations files, based on Start Date of the investigation. An investigation file may include activities relating also to another legislation and may include one or more regulations. Therefore, the total number of investigations shown by regulation may not add to the total at the legislation level.

[12] - Means no activity or measure for the report period.

ADDITIONAL STATISTICS

There were 13 referrals to other federal/provincial or municipal government or department. Table 7 presents the breakdown of investigation in 2011-2012.

Table 7:
Investigation Breakdown
Fiscal Year 2011-2012

INVESTIGATION BREAKDOWN	# of Investigations
Investigations started and ended in fiscal year 2011-2012	13
Investigations started in fiscal year 2010-2011 and still ongoing at end of fiscal year 2011-2012	41
Investigations started before 2010-2011 and ended in fiscal year 2011-2012	37
Investigations started before fiscal year 2011-2012 and still ongoing at the end of fiscal year 2011-2012	43

EXPLANATORY NOTES: THE STATISTICS ARE TABULATED AS FOLLOWS

The measures are tabulated at the regulation level of a regulation. For example, if the outcome of an inspection is the issuance of a written warning which related to 3 sections of a given regulation, the number of written warnings is 1. This is the reason why we observe smaller numbers during 2011-2012 than the previous fiscal years.

Prosecutions: The number of prosecutions is represented by the number of regulatees that were prosecuted by charged date regardless of the number of regulations involved.

Charges: The number of charges is tabulated at the section level of the regulation by charge date, by regulatee. For example, a regulatee violating sections 36(1) and 36(3) of the *Fisheries Act* may be charged with one count under section 36(1) and two counts under section 36(3). This is considered as two charges – one for each section. Charges are counted in relation to the date the charge was laid, not the date when the case began or ended.

Counts: The number of counts is tabulated at the section level of the regulation, by offence date relating to the regulatee's charge.

Convictions: The number of convictions is represented by the number of counts where the regulatee was found guilty or pleaded guilty. For example, in a case where a regulatee is found guilty of one count under section 36(1) and two counts under section 36(3), this is considered three convictions.

4.5.2 Enforcement Highlights

British Columbia
On May 13, 2011, Teck Metals Ltd, agreed to pay $325,000 for depositing mercury into the Columbia River and allowing a leachate to overflow into Stoney Creek. This action was in response to two chemical spills that took place in 2010. Investigations revealed that potential violations under federal *Fisheries Act* had taken place during these instances. Of the total amount being paid, $100,000 will go to the Environmental Damage Fund. The remaining funds will be designated to support a variety of community environmental initiatives. In consultation with Teck Metals Ltd., a decision was made to pursue an alternative measure known as a Community Justice Forum. A Community Justice Forum brings an offender, victim(s) and their respective stakeholders together with a trained facilitator to discuss an offence and its effects and jointly decide how to resolve the situation. This is the first time Environment Canada has used the Community Justice Forum process in an enforcement matter. As a result, Environment Canada has had direct input into changes within Teck Metals Ltd. that will reduce the risk of similar spills in the future.

Northwest Territories
On September 16, 2011, Imperial Oil Resources Northwest Territories (NWT) pleaded guilty to federal charges of releasing a harmful substance into fish-bearing waters, and violating conditions of its water license. The plea was entered on one count in relation to the prohibition against the deposit of a deleterious substance under s.36 (3) of the *Fisheries Act* and related to the release of NALCO 7390 (a substance used to reduce corrosion) into the Mackenzie River. The company was fined $5,000 for the offence and was also ordered by the Court to pay $155,000 to the Environmental Damages Fund to be used to promote the conservation and protection of fish and fish habitat in the Sahtu Region of the NWT.

Québec
On September 26, 2011, Stadacona General Patner Inc. pleaded guilty to having released one million litres of untreated process water into the Saint-Charles River, in Québec, and of having used a non-standard sampling method. Committed in December 2007, these acts violate the *Fisheries Act* and the requirements of the *Pulp and Paper Effluent Regulations*. The Environment Canada investigation, completed in 2009, showed that a breakdown and poor functioning of the pumping station equipment and lack of maintenance of the equipment caused the release of harmful substances. The penalty imposed on the company is the payment of $49,500 to the Environmental Damages Fund. The Court also imposed a $5,500 fine.

British Columbia
On October 17, 2011, a resident of Smithers, British Columbia was sentenced on October 11, 2011 to three days jail time, one day for each charge under section 79.6 of

the *Fisheries Act* for failing to comply with a June 2008 Court Order as a result of an Environment Canada investigation. The court deemed the resident's jail time served by his presence in court and ordered that the resident pay off his outstanding $17,000 debt to the Environmental Damages Fund and perform remediation work on his property adjacent to Robin Creek. The Smithers resident was first charged by Environment Canada in March 2005, and found guilty in 2008, for having allowed agricultural discharges into the Robin Creek; for having allowed the harmful alteration, disruption or destruction of fish habitat; and for having failed to comply with a condition of an Inspector's Direction.

Alberta
On December 7, 2011, the Town of Ponoka, Alberta was fined $70,000 in Alberta Provincial Court after pleading guilty to one court under the *Fisheries Act*, related to the release of municipal wastewater into the Battle River. An investigation by Environment Canada found that the Town of Ponoka was releasing effluent from their wastewater lagoon into the Battle River. Sample analysis of the effluent determined that it was harmful to fish. The Town of Ponoka has been ordered to pay a total penalty of $70,000, of which $3,750 is a fine under the *Fisheries Act*, and $66,250 is to be paid into the Environmental Damages Fund to be used for the conservation and protection of fisheries and fish habitat in the Battle River, its tributaries and watershed.

Alberta
On January 13, 2012, Clark Builders was ordered in Alberta Provincial Court to pay a total penalty of $285,000 in Alberta Provincial Court after pleading guilty to one count under the *Fisheries Act*. This relates to the release of approximately 12 million litres of chlorinated water into the North Saskatchewan River following the striking of a water main during construction on July 20, 2009. Sample analysis of the chlorinated water determined that it was harmful to fish. $270,000 of the penalty is to be paid to the Environmental Damages Fund to be used for the specific purpose of conserving and protecting fish and/or fish habitat in the Province of Alberta.

4.6 Environmental Emergencies Program

EC's Environmental Emergencies Program (EEP) plays an important role in responses to the deposit of deleterious substances in water frequented by fish. Subsection 38(5) of the *Fisheries Act* states that persons who own or are responsible for a deleterious substance, or persons who cause or contribute to an unauthorized deposit of the deleterious substance in water frequented by fish, must "take all reasonable measures consistent with safety and with the conservation of fish and fish habitat" to prevent the deposit or, where that deposit actually does occur, "to counteract, mitigate or remedy any adverse effects that result or may reasonably be expected to result". If a spill or other unauthorized deposit occurs and if required, EC provides environmental and technical advice to the responsible parties, environmental response organizations and other levels of government.

In addition, EC's Environmental Emergencies personnel:

- may receive notifications of deposits of deleterious substances into the environment; access and inspect the site of the deposits or any documents in order to observe or to carry out spill response activities;
- collect relevant information and samples for the purpose of establishing the fate and effects of the pollutant, and determine environmental damage;
- issue inspector's directions requiring the responsible parties to take preventive or remedial measures if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary;
- take all reasonable measures or cause them to be taken, if the inspector is satisfied on reasonable grounds that there is an occurrence and that immediate action is necessary; and
- support enforcement actions.

EC works closely with partners and agencies at the regional level involved in an environmental emergency response. The scope and nature of on-site inspections varies across the country depending on the location of the incident, the responsible parties and arrangements that exist with other jurisdictions. EC's seeks to protect the environment against deposits of deleterious substances in water frequented by fish in a way that minimizes duplication of administrative effort between federal, provincial and territorial governments. To support effective action in each region, EC coordinates or participates in Regional Environmental Emergencies Teams which provide agencies involved in an environmental emergency response with consolidated advice and scientific information on environmental protection, environmental damage assessment, clean-up measures and the disposal of waste resulting from cleanup activities.

In 2011-2012, EC recorded approximately 1,970 occurrences (compared to 1,877 the previous year) involving the deposit of a deleterious substance out of the normal course of events under the *Fisheries Act*. EC provided scientific and technical advice to responders for 852 of these spills, to help set environmental priorities and select the best spill mitigation strategies. EC's Environmental Emergency Officers, who are designated as inspectors under the *Fisheries Act*, conducted 76 onsite inspections to verify that the responsible parties complied with subsection 38(5) of the *Fisheries Act*. In 2011-2012, EC also undertook a series of compliance promotion activities aimed at increasing compliance with subsection 38(4) of the *Fisheries Act* requiring notification of 'deposits out of the normal course of events' (DONCE). This included providing information to Federal government agencies, provincial governments, and a wide range of industrial sectors and operators as well as to First Nation communities.

4.7 Agreements with Provinces and Territories

4.7.1 Administrative agreements

The Government of Canada has administrative agreements with three provinces – Alberta, Saskatchewan and Quebec - for the cooperative administration of *Fisheries Act* activities related to section 36.

The ***Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act*** entered into force on September 1, 1994. The agreement, establishes the terms and conditions for the cooperative administration of subsection 36(3) and the related provisions of the *Fisheries Act*, as well as regulations under the *Fisheries Act* and the *Alberta Environmental Protection and Enhancement Act*. The Agreement streamlines and coordinates the regulatory activities of EC and Alberta Environment and Sustainable Resource Development (AESRD) in relation to the protection of fisheries, and reduces duplication of regulatory requirements for regulatees.

During 2011-2012, AESRD reported 574 incidents to EC related to the *Fisheries Act*. This collaboration led to 533 (on-site and off-site) inspections and 6 investigations. EC conducted an additional 60 off-site inspections under the Pulp and Paper Effluent Regulations and the Petroleum *Refinery Liquid Effluent Regulations* for monthly and annual reports forwarded from AESRD in accordance with the Agreement.

In 2011, the *Canada-Alberta Environmental Occurrences Notification Agreement* amended the 1994 *Canada-Alberta Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act,* with respect to the notification of environmental occurrences.

To facilitate the cooperative administration of subsection 36(3) of the *Fisheries Act* and its accompanying regulations, EC maintains bilateral agreements with Saskatchewan. The ***Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act*** sets out the principles for cooperation and identifies a preliminary list of activities where detailed collaborative arrangements could be developed. Existing collaborative arrangements are described in the five annexes to the agreement.

In 2011-2012, the Saskatchewan Ministry of Environment reported 703 spills to the EC's Enforcement Branch, of which 66 were possible *Fisheries Act* violations. Four of these led to on-site inspections of which one lead to an investigation. The remaining 62 occurrence referrals did not require an on-site inspection but generated an additional 15 off-site inspections.

In 2011, the *Canada-Saskatchewan Environmental Occurrences Notification Agreement* amended the 1994 *Canada-Saskatchewan Administrative Agreement for the Control of Deposits of Deleterious Substances under the Fisheries Act,* with respect to the notification of environmental occurrences.

Administrative agreements concerning the pulp and paper sector have been in place between the province of Quebec and the Government of Canada since 1994. On March 29, 2012, the Governor in Council authorized the Minister of the Environment and the Minister of Fisheries and Oceans to sign the Agreement for the Government of Canada. The fifth Agreement expired on March 31, 2012. The parties continued to cooperate in keeping with the spirit of the fifth Agreement during the interim period of April 1, 2007 to March 31, 2012.

The agreement recognized Quebec as the principal interlocutor for receiving, from the pulp and paper and metal mining sectors in that province, most of the data and information required pursuant to the following four federal regulations:

- *Pulp and Paper Mill Effluent Chlorinated Dioxins and Furans Regulations* made pursuant to the Canadian Environmental Protection Act (CEPA) 1999;
- *Pulp and Paper Mill Defoamer and Wood Chip Regulations* made pursuant to CEPA 1999;
- *Pulp and Paper Effluent Regulations* made pursuant to the *Fisheries Act*; and,
- *Metal Mining Effluent Regulations* made pursuant to the *Fisheries Act*.

Under the agreement, the province acts as a "single window" for the gathering of information from Quebec pulp and paper mills and forwards such information to Environment Canada for the purpose of enabling the latter to implement CEPA 1999 and the *Fisheries Act*, and their regulations. Both levels of government retain full responsibility for carrying out inspections and investigations and for taking appropriate enforcement measures in order to ensure compliance with their respective requirements on the part of the industry.

During this reporting period, more than 613 reports produced by pulp and paper facilities in Quebec were examined against the regulations pursuant to *Fisheries Act*. These administrative inspections and the 19 on-site inspections verified that the facilities were in compliance with the applicable regulations. As well, Environment Canada presented compliance verification reports to Quebec. These presentations are made during meetings of the Management Committee established by the Agreement. In 2011–2012, the Management Committee met twice, on October 19, 2011 and March 28, 2012.

4.7.2 Environmental Occurrences Notification Agreements

Federal, provincial and territorial laws require, in most cases, notification of the same environmental emergency or environmental occurrence, such as an oil or chemical spill. In order to reduce duplication of effort, Environment Canada and Fisheries and Oceans Canada entered into Environmental Occurrences Notification Agreements ("Notification

Agreements") with the governments of Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, as well as with the governments of the Northwest Territories and Yukon.

These Notification Agreements came into effect on March 25, 2011, on the day the *Release and Environmental Emergency Notification Regulations* under CEPA, 1999, and the *Deposit Out of the Normal Course of Events Notification Regulations* under the *Fisheries Act*, came into force.

The purpose of the Notification Agreements is to establish a streamlined notification system for persons required to notify federal and provincial/territorial governments of an environmental emergency or environmental occurrence (spill, release, etc.). Under these Notification Agreements, 24-hour authorities operating for the provinces and territories receive notifications of environmental emergencies or environmental occurrences, on behalf of Environment Canada, and transfer this information to Environment Canada.

In 2011-2012, Environment Canada continued to work with its provincial and territorial counterparts to implement the Notification Agreements. The implementation of the Agreements included the establishment of Management Committees and the development of Standard Operating Procedures for the collection and processing of notifications of environmental occurrences.

To view the Notification Agreements, consult: http://www.ec.gc.ca/lcpe cepa/default.asp?lang=En&n=5200AB4B-1